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November 4, 2022

The Honorable Janno Lieber
Chair and CEO
Metropolitan Transportation Authority
2 Broadway
New York, NY 10004

Dear Mr. Lieber:

I am writing to express my concern about the lack of transparency in the pricing of air rights used to pay for some of our region's capital projects, including the Port Authority Bus Terminal redevelopment, the Penn Station expansion, and the Penn Station renovation. I would like to request a formal briefing for the New Jersey Congressional Delegation about how the Metropolitan Transportation Authority (MTA) is pricing air rights in its capital plan, given: (1) reduced demand for commercial real estate caused by the proposed Congestion Tax and the pandemic; and, (2) increased supply of commercial real estate from selling these air rights. Also, I would like to better understand whether selling limited air rights around Penn Station for its renovation means limiting the availability of air rights to fund its expansion.

The Penn Station expansion is critical to increasing rail capacity from the current twenty-one tracks that accommodate approximately 1,300 train movements each weekday, so that we can make full use of the Gateway Program's expanded Hudson River Tunnel. The Penn Station expansion will relieve a critical bottleneck in the region's transportation infrastructure, making it viable for more commuters to enter New York City.

Unlike the station's expansion, however, its redevelopment will not make it possible for more commuters to enter New York City. According to a Cuomo Administration presentation, this project is also expected to be paid for by selling air rights.¹ The expansion and renovation are both expected to be paid for, among other sources, with air rights from nearby properties.

Another essential project for our region is the Port Authority Bus Terminal redevelopment. Built more than seventy years ago, the Terminal accommodates 260,000 riders every day, far exceeding the planned 60,000 daily commuters.² I was proud to support the Port Authority's request for federal funding to supplement funds allocated from its capital projects account. Much of that investment is expected to come from selling air rights.³

¹ https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ABNY_Empire_Station_Complex.pdf

² <https://www.nytimes.com/2021/01/21/nyregion/port-authority-bus-terminal.html>

³ <https://www.bondbuyer.com/news/in-transit-air-rights-is-the-sky-the-limit>

Following a successful full-funding grant agreement for the Portal North Bridge,⁴ and a signed MOU for the Gateway Tunnel,⁵ Amtrak awarded preliminary design contracts for Penn Station's expansion⁶ and the Port Authority designated a design contract for the bus terminal's redevelopment.⁷ These promising developments showed that New Jersey and New York can work together to coordinate and invest in critical priorities for the region.

Since the COVID-19 pandemic and increased work-from-home arrangements, demand for commercial real estate has decreased and analysts are unsure when, or even if, it will return to its pre-pandemic peak.⁸ Paying for so many capital projects with air rights funding will increase the supply of commercial real estate, and could impact the ability to raise revenue for the Port Authority Bus Terminal redevelopment and Penn Station expansion.

New York and the MTA are also working to impose a Congestion Tax on commuters, which could go into effect as early as 2023, and would cost Jersey and New York drivers up to \$23 dollars a day on top of the already far-too-high \$16-a-day tolls for our bridges and tunnels. This new tax will likely further depress demand for commercial real estate in Manhattan's Central Business District. As noted in Governor Murphy's letter to the Port Authority, the Congestion Tax will likely negatively impact the Port Authority's capital plan.⁹

Beyond my concerns about the MTA's accounting for the value of these air rights, I am also concerned that selling the scarce air rights around Penn Station for its redevelopment could limit funding for the station's expansion. Given these concerns about the MTA overestimating the price and availability of air rights for financing the Penn Station expansion, would New Jersey be expected to make up the shortfall? If not, who would cover this deficit?

Overall, I am deeply concerned about the lack of transparency regarding air rights pricing and the impact on our region's most important capital projects. Given these concerns, as noted above, I would like to request a formal briefing for the New Jersey Delegation regarding the value and availability of these air rights, and who will wind up footing the bill for any miscalculations.

Thank you for your consideration and quick response.

Sincerely,



Josh Gottheimer
Member of Congress

⁴ <https://www.masstransitmag.com/rail/infrastructure/article/21166043/nj-transit-board-authorizes-ffga-with-fta-for-portal-north-bridge>

⁵ <https://rpa.org/latest/news-release/gateway-program-mou-ny-nj>

⁶ <https://media.amtrak.com/2022/06/amtrak-awards-contract-to-arup-for-preliminary-design-of-railroad-infrastructure-that-will-support-new-york-penn-station-expansion/>

⁷ <https://www.panynj.gov/port-authority/en/press-room/press-release-archives/2022-press-releases/port-authority-announces-two-firm-team-of-world-renowned-archite.html>

⁸ <https://www.wsj.com/articles/pressure-on-new-york-city-commercial-real-estate-worries-investors-11603013400>

⁹ <https://www.nj.com/news/2022/10/murphy-warns-port-authority-dont-cut-jersey-projects-if-congestion-pricing-goes-through.html>